

# Law Office of Jack Silver

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## **CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

August 3, 2007

Peter M. Kuhn, President  
Bullion River Gold Corp.  
3500 Lakeside Court, Suite 200  
Reno, NV 89509-4896

Peter M. Kuhn, President  
French Gulch (Nevada) Mining Corp.  
1325 Airmotive Way, Suite 325  
Reno, NV 89502-3289

### ***RE: Notice of Violations and Intent to File Suit Under the Clean Water Act***

Dear Managing Agent and/or Owner:

Clean Water Act § 505(b), 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action for violations under Clean Water Act § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of intent to sue to the alleged violator, the Environmental Protection Agency and the State in which the violations occur.

Stuart and Bianca Bennett and Northern California River Watch (collectively "Citizens") hereby place Bullion River Gold Corp. and French Gulch (Nevada) Mining Corp. (collectively "Polluters") on notice that following the expiration of sixty (60) days from the date of this NOTICE, Citizens intend to bring suit in the United States District Court against Polluters for their continuing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under Clean Water Act § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by Polluters' illegally discharging from the Washington Mine site and facilities described further in this NOTICE and identified on the attached Location Map, without a Clean Water Act § 402(a) NPDES permit issued under CWA § 402(b).

This NOTICE also addresses Polluters' failure to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID # 228S003380), its illegal discharges of contaminated stormwater from its facilities as further described in this NOTICE, its discharges of non-storm water pollutants from those facilities in violation of effluent limitations, and its violations of the procedural requirements of National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to Clean Water Act § 402(p), 33 U.S.C. § 1342(p), the General Permit.

The Clean Water Act ("CWA") regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a permit pursuant to the NPDES, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. §1311(a) prohibition. Polluters do not have a NPDES permit for point source discharges [see CWA §§ 402(a) and 402(b)]. Without a NPDES permit all discharges from Polluters' site identified below to waters of the United States are illegal. Polluters only have a NPDES permit issued under CWA § 402(p) for stormwater. All non-stormwater discharges and stormwater discharges containing pollutants are violations of the CWA.

#### SITE DESCRIPTION

Washington Mine (the "Site") is located approximately 2.6 air miles northwest of French Gulch in western Shasta County, California. Access to the mine facilities is provided via unimproved dirt roads which extend from French Gulch Road. The total surface area affected by mine operations is about 5.5 acres.

Washington Mine has historically been used solely for the extraction and processing of gold-containing ore. The mine has been in operation intermittently since 1852. The existing mill building was constructed in 1939. The project Site consists of patented and un-patented claim blocks totaling 1,825 acres, 470 acres of which are patented. Surface rights to the un-patented claims are administered by the BLM Service Group. The claims are located within several sections, but primarily in Township 33 North, Range 7 West, Sections 16 and 17.

The Site facilities listed below have been used since January 1, 1976, or are planned for current active operation.

## Mill

The mill is located on a long, narrow bench at the 2,400-foot elevation. The mill processes ore from the mine. An office is located in the vicinity of the mill building for ore processing. Three 1,000-gallon diesel, aboveground storage tanks (“ASTs”) and one 200-gallon gasoline AST are present at the mill location. All four tanks are located approximately 100 feet east of the Site adit. A tailings thickener and two air compressors are also located between the mill building and adit. The air compressors are located on a concrete foundation immediately adjacent to the AST east of the Site adit, while the thickener is located directly on the ground surface above the former percolation settling ponds.

A reverse osmosis water treatment system has been installed immediately west of the tailings thickener. The water treatment system is designed to remove all dissolved ions, including heavy metal ions. The system will be utilized to treat excess mine milling industrial waters, as well as to provide water for showers, sinks, and toilets. The system currently in place provides approximately 15 gallons per minute of water. The waste from this system is illegally discharged off Site.

Following treatment, waste water not required for mining and milling operations is surface applied at the areas being actively reclaimed to the west of the Site adit. The process water is over applied and runs off the Site entering surface waters. Storm water runoff is supposed to be confined to the long bench containing these facilities, as French Gulch Road is immediately above the mill building, and intercepts and diverts runoff from upslope of the mill bench.

Potential pollutants include petrochemicals, potassium xanthate, copper sulfate, arsenic, methylisobutylcarbanol, and sediment.

## Most Recent Adit

The most recent adit is located approximately 360 feet southwest of the existing mill location. The adit is located on the same long narrow bench containing the mill, at an elevation of 2,400 feet. This bench formerly contained a percolation pond and tailings settling pond, which have since been filled, but not remediated. None of the pollutants from the percolation ponds including arsenic were removed. Those pollutants continue to leak into the groundwater or are washed offsite during rain events.

## Boneyard

To the southwest of the mill is another long, narrow bench known as the Boneyard. The Boneyard contains no permanent structures. It has been used in the past for

stockpiling materials and supplies. The Boneyard is approximately 200 feet long by up to 40 feet wide, at an elevation of 2,400 feet. Drainage in the vicinity of the Boneyard appears to be by sheet flow and drainage channels. The Boneyard is highly contaminated with toxic metals including arsenic and has never been remediated. Pollutants leach into the groundwater and are also washed off site during rain events.

### Robillard Adit and Escapeway

The Robillard Adit is at an elevation of 2,360 feet, located southeast of the mill. Its staging area consists of 2 long, narrow benches. The larger upper bench is at the level of the adit, and contains 18-gauge rail for ore carts, which are no longer in use. The rail extends on a trestle over the lower bench. A 2-foot high safety berm is present along the outer edge of the lower bench. Waste rock was once disposed of by pushing it over the edge of the lower bench, creating a barren and relatively unstable slope below the bench.

At times, waste water and acid drainage flows by gravity out of the adit and into the Scorpion Gulch drainage. The Robillard escapeway is located roughly 200 feet north-northwest of the Robillard Adit. The portal to the escapeway has caved in and is longer proposed for use. It is on a south-facing slope at an elevation of about 2,480 feet. An access road extends from the tailing disposal road to the escapeway and is about 250 feet in length. Drainage in the vicinity of the escapeway appears to be by sheet flow toward a ditch running along French Gulch Road. Storm water runoff throughout the area is a significant source of pollution to Scorpion Gulch.

### 2630 Level Adit

The 2630 Level Adit is on an east-facing slope at an elevation of about 2,625 feet, located northeast of the mill. The staging area of the adit consists of a single bench with a short access spur extending east to the access road for the tailings disposal site. Currently, the staging area is being utilized to store drill cores generated during mine exploration. The adit was illegally constructed by a previous mine operator. A metal storage bin was formerly used to access the adit and is still present. The adit itself has since collapsed and is not proposed for future use. Drainage in the vicinity of the adit appears to be by sheet flow toward the tailings disposal road.

### I-Level Adit

The I-Level Adit is on an east-facing slope at an elevation of about 2,160 feet, located in the northeastern portion. Ore is currently being mined from the adit and transported via haul trucks to the new adit staging area.

Similar to the Robillard Adit, waste water and acid drainage flows by gravity out of the I-Level Adit and makes its way to surface waters including adjacent waters of the United States. The pollutants flow into a small settling pond just outside the I-Level Adit and then indirectly into the Right Fork of the French Gulch.

### Tailings Disposal

The tailings disposal site is on an east-facing slope at an elevation of 2,800 feet. Tailings deposited at the disposal site were periodically leveled and contoured or bermed creating the steep face of the stockpile. Erosion at the disposal site has formed a significant gully on the eastern side of the Site. Tailings have been observed down slope of the gully, washed down during storm events. The potential contaminants in the tailings, the continued erosion of the gully itself, as well as the overall stability at this location are significant concerns.

This location is currently being utilized for storage of waste rock generated from mining activities at the new site adit. Storm water runoff flows in an easterly direction toward the gully or toward a road washout and smaller gully located on the right side of the tailings disposal access road. Storm water runoff appears to flow into the Right Fork of French Gulch from both gullies.

### Retention Pond

One unlined retention pond is present immediately east of the I-Level adit. The pond receives discharge from the adit and allows sediment to settle prior to flowing out of the pond. Wastewater flows from the pond into a pipe and over ground into the Right Fork of French Gulch.

### SITE OPERATIONS

There are no storm water discharge systems on Site. Surface waters in the vicinity of the actively used mine locations consist of perennial streams that flow either to the north and east through the Right Fork of the French Gulch or to the south through Scorpion Gulch.

Groundwater currently flows by gravity out of the Robillard and I-Level Adits. Wastewater is discharged off site. Process water is applied via irrigation sprinklers to the area west of the mill formerly used for tailings storage, the bench area west of the new portal, and the boneyard area at the extreme west end. This improper disposal and discharge leaches pollutants into the groundwater and to surface waters including waters of the United States.

Sources of pollutants in storm water discharge at the Washington Mine Site include the milling process, vehicle and equipment fueling, usage and maintenance, materials storage, road maintenance and other activities. The majority of industrial processes at the Site take place at the existing mill location. The area between the mill and the new adit that cannot be used for alternative applications, such as road building material, rip-rap, etc., are intended to be used on-site to reclaim previously disturbed areas. This would include the area west of the mill, which was previously used for tailings storage, as well as the bench area past the proposed new adit and the boneyard area at the extreme west end of the Site. The intent is to spread and compact the mine waste rock, ultimately restoring the natural profile of the hillside. This fill system will be engineered to ensure long-term stability of the emplaced materials.

Ore is withdrawn from the surface stockpiles and fed to the crusher with a front-end loader. Crushed and screened ore is conveyed via belt to a 500-ton fine ore bin. Ore is withdrawn from the bin and fed to the grinding mill by an apron feeder conveyor combination. The ore is ground in the mill and separated by cyclone classifiers into coarse and fine fractions. The fine fraction is sent to a Falcon concentrator. The coarse fraction returns to the grinding mill for further size reduction. In the Falcon concentrator, the gold is separated from the other minerals by centrifugal force. The gold concentrate is collected and sent to the melt room.

The tailings from the Falcon concentrator are then further processed on shaking tables. The shaking tables use the differences in specific gravity of the gold and the other minerals to recover the very fine gold in the grind mixture. The recovered gold from the shaking tables is transferred to the melt room.

The tailings from the shaking tables are then pumped to the flotation conditioner tanks where they are mixed with a flotation collector in solution. The collector chemical, potassium xanthate, forms a bond with sulfide minerals which are in contact or surround some of the recoverable gold. The xanthate causes the sulfide minerals to become hydrophobic and amenable to forming a bond with air bubbles. The conditioned slurry is then transferred to a series of flotation cells in which air is injected into the cell to form bubbles. A frother, methylisobutylcarbanol, is injected to help form air bubbles during the flotation process, and copper sulfate is injected to enhance the attachment of the metal sulfides to the air bubbles in the flotation cells. As the bubbles float upward through the slurry, the sulfide minerals attach to the bubbles and are drawn off into a launderer at the top lip of the cell. The gangue minerals do not attach to the bubbles and are transferred along the bottom of the cell to the next cell in the bank. Ultimately, the slurry, which contains a concentration of toxic metals such as arsenic, lead, copper, and zinc, flows to the tailings thickener where it is partially de-watered prior to final disposition as backfill in the mine. Two thirds of the tailing volume is typically used in backfilling, one third is

deposited in chambers built for final disposal or for eventual recycling to stopes as backfill.

The concentrated minerals recovered from the flotation process then flow to a series of disc filters where they are de-watered. The filter cake from the disc filters is then collected in bags and shipped off-site to be further processed. Waters utilized in the industrial processes are often illegally discharged. The mill does not have a sulfide roaster or an autoclave to treat the sulfides and recover the gold on-site. Dore ingots will be cast in the melt facility from gravity concentrates.

#### OTHER NON-PERMITTED DISCHARGES

Other than previously described, other non-permitted water discharges at the Site include the wastewater and acid leachate flowing by gravity out of the Robillard, I-Level and Barnes adits and into the Right Fork of French Gulch or into Scorpion Gulch, discharges from trucks and other equipment for dust control and for the elimination of excess process waters, discharges from ponds and piping, and illegal releases of process water.

#### SOIL EROSION

All the soils mapped within the vicinity of the Site have a significant potential for erosion. The areas west of the mill and new adit that will be reclaimed with mine waste rock will serve as areas with a high potential for erosion.

The main erosion control and site stabilization concern at the Site revolves around the areas proposed to be actively reclaimed with mine waste rock. Polluters have used mine waste rock for erosion control and reclamation. However, the waste rock contains high amounts of toxic metals and sediment. The use of the mine waste rock causes stability problems. Erosion control concerns present a problem in all areas where soil has been placed and vegetation has not had ample time to become established. Polluters currently use a combination of silt fencing, straw wattles, and straw bales around soil stockpiles and downslope of highly erodible areas, such as areas being actively reclaimed. These measures are clearly inadequate as they allow large amounts of pollutants, toxic metals and sediment to be washed off site and into creeks, gulches and streams.

Runoff from the access roads throughout the Site is a serious cause of soil erosion pollution and sediment loss from the Site. The roads are improperly maintained. Waste rock containing toxic metals such as arsenic and copper are used to surface roads and then are leached out during rains and when Polluters discharge waste water as part of their "dust control".

## GOOD HOUSEKEEPING

Good housekeeping includes maintaining a clean and orderly work environment. A clean and orderly work area reduces the possibility of accidental spills caused by the mishandling of equipment or materials, and reduces safety hazards to personnel. It also reduces the chance of storm water coming into contact with spilled or improperly stored or placed significant materials. Currently Polluters have not implemented Good Housekeeping.

## NOTICE

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

- 1. The specific standard, limitation, or order alleged to have been violated.**

To comply with this requirement Citizens have noticed Polluters of the fact that they have no NPDES permit allowing them to discharge pollutants to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a) and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b).

- 2. The activity alleged to constitute a violation.**

To comply with this requirement Citizens have set forth narratives describing with particularity the activities leading to violations.

- 3. The discharger responsible for the alleged violation.**

The discharger responsible for the alleged violations are the entities collectively referred to as "Polluters" throughout this NOTICE.

- 4. The location of the alleged violation.**

The location or locations of the various violations are identified in the Site Description section of this NOTICE and in records either created or maintained by or for Polluters which relate to Polluters' activities on the Site.

- 5. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.**

This NOTICE covers the statutory period of limitations to date running from July 31, 2002 through July 31, 2007. Citizens will from time to time update and supplement this NOTICE to include all violations which occur after the date of this NOTICE. The majority of the violations such as discharging pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the CWA, failure to meet water quality objectives, etc., are continuous, and therefore each day is a violation. Citizens believe all violations set forth in the NOTICE are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Water Quality Control Board, County Health and local police and fire departments.

**6. The full name, address, and telephone number of the person giving notice.**

The persons giving this are Stuart and Bianca Bennett, 11413 French Gulch Road, French Gulch, CA. 96033 Tel. 530-359-2401, and Northern California River Watch, 6741 Sebastopol Avenue, Suite 140, Sebastopol, CA 95472. Tel. 707-824-4372.

Stuart and Bianca Bennett are individuals directly affected by Polluters' illegal acts as described in this NOTICE. The Bennetts live adjacent to the Site and down stream of its pollution. The Bennetts are members of Northern California River Watch.

Northern California River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California.

The violations of Polluters as set forth in this NOTICE affect the health and enjoyment of Citizens (or their members) who reside and recreate in the French Gulch watershed. Citizens (or their members) use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Polluters' violations of the CWA.

**VIOLATIONS**

Polluters have caused or permitted, cause or permit, or threaten to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance. Continuing discharges are in violation of the CWA, Porter-Cologne Water Quality

Control Act and provisions of the Water Quality Control Plan for the North Coast Region ("Basin Plan").

Beneficial uses of areal groundwater include domestic, irrigation, and industrial supply. Beneficial uses of Scorpion Gulch and French Gulch watersheds include the following:

- a. municipal and domestic supply
- b. agricultural supply
- c. industrial process supply
- d. groundwater recharge
- e. navigation
- f. hydropower generation
- g. water contact recreation
- h. non-contact water recreation
- i. commercial and sport fishing
- j. warm freshwater habitat
- k. cold freshwater habitat
- l. wildlife habitat
- m. migration of aquatic organisms
- n. spawning, reproduction, and/or early development.

Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria.

Discharge prohibitions contained in the Basin Plan apply to this Site. State Water Resources Control Board Resolution 68-16 (Statement of Policy With Respect To Maintaining High Quality of Waters in California) applies to this Site. State Water Resources Control Board Resolution 92-49 also applies to this Site and sets out the Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Section 13304 of the California Water Code.

CWA §301(a), 33 U.S.C. §1311(a), the Environmental Protection Agency and the State of California have formally concluded that violations by Polluters as described and set forth in this NOTICE by are prohibited by law. Beneficial uses of Scorpion Gulch, French Gulch and their tributaries in the vicinity of the Site are being affected in a prohibited manner by these violations. Pursuant to CWA § 304, 33 U.S.C. § 1311, the Environmental Protection Agency and the State have identified Polluters' Site as a point source, the discharges from which contribute to violations of applicable water quality standards.

From July 31, 2002 through July 31, 2007, Polluters have violated the CWA, the Basin Plan and the Code of Federal Regulation for discharging pollutants into waters of the United States without an NPDES permit as described above.

These enumerated violations are based upon review of the Regional Water Quality Control Board files for Polluters as well as studies conducted by Polluters in compliance with orders from regulatory agencies. In addition to all of the above violations, this NOTICE covers any and all violations evidenced by Polluters' records and monitoring data which Polluters have submitted (or failed to submit) to the Regional Board or other agencies. This NOTICE also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Polluters to the Regional Board or other regulatory agencies.

Pursuant to CWA § 309(d), 33 U.S.C. §1319(d), each of the above described violations of the CWA subjects the violator to a penalty of up to \$32,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, Citizens will seek injunctive relief preventing further violations of the CWA pursuant to CWA §§ 505(a) and 505(d), 33 U.S.C. §§1365(a) and 1365(d), and such other relief as is permitted by law. Lastly, CWA § 505(d), 33 U.S.C. §1365(d), permits prevailing parties to recover costs and fees.

#### CONTACT INFORMATION

Citizens have retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire  
Law Office of Jack Silver  
Post Office Box 5469  
Santa Rosa, CA 95402  
Tel. 707-528-8175  
Fax. 707-528-8675

#### CONCLUSION

Citizens believe this NOTICE sufficiently states grounds for filing suit for violations of the CWA. At the close of the 60-day notice period or shortly thereafter Citizens intends to file a citizen's suit under CWA § 505(a) against Polluters for violations at the Site described herein.

During the 60-day notice period, Citizens are willing to discuss effective remedies for the violations noted in this NOTICE. However, Polluters wish to pursue such

discussions in the absence of litigation, it is suggested that those discussions be initiated within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Sincerely,



Jack Silver

cc:

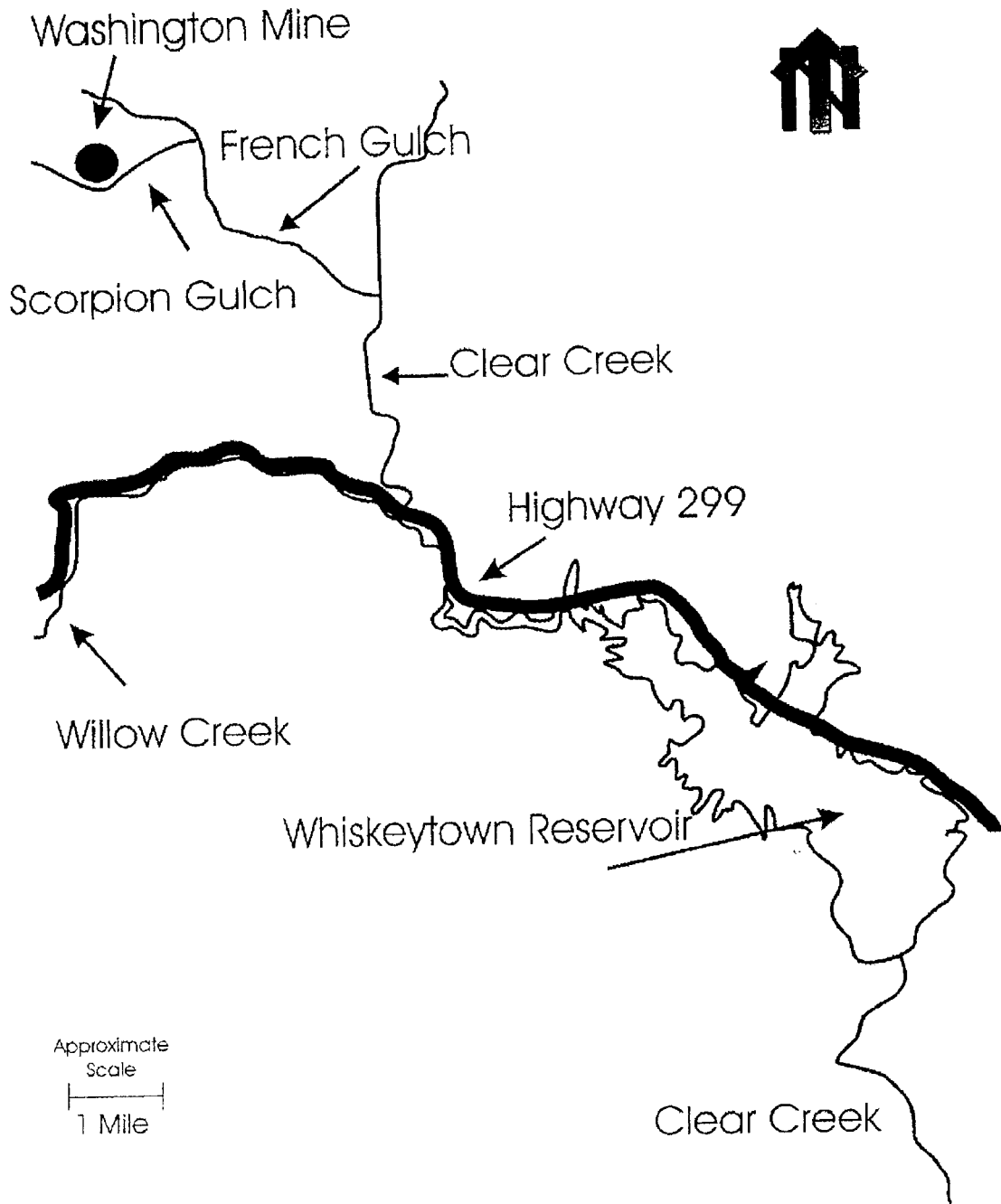
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Wayne Nastri, Regional Administrator  
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P.O. Box 100  
Sacramento, California 95812-0100

C T Corporation System  
Registered Agent  
French Gulch (Nevada) Mining Corp.  
818 West Seventh St.  
Los Angeles, CA 90017

# Location Map



Washington Mine

French Gulch

Scorpion Gulch

Clear Creek

Highway 299

Willow Creek

Whiskeytown Reservoir

Approximate  
Scale

1 Mile

Clear Creek